

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. C-1-00-0828
)	
BRUCE GARVIN, et al.)	Hon. Sandra S. Beckwith
)	Magistrate Judge Hogan
Defendants.)	

UNITED STATES' MOTION FOR ORDER OF DISTRIBUTION

The United States, by its undersigned counsel, pursuant to 26 U.S.C. §§ 7402(a) and 7403(d), requests an Order of this Court distributing the remaining proceeds of the sale of the real property at 1192 Hickory Lake Drive, Cincinnati, Ohio (hereinafter "subject property"), in the amount of \$1,092.92, to the United States. In support of its motion, the United States avers as follows:

1. On February 24, 2003, this Court confirmed the sale of the subject property to Dorothy M. Garvin, for the sum of \$55,000.00. The Court also ordered the distribution of the sale proceeds as follows: first, the amount of \$1,523.00, to Carlisle, McNellie, Rini, Kramer & Ulrich Co., L.P.A., for the costs of the sale; second, the amount of \$2,875.98, to the Hamilton County Treasurer, for the first half of the year 2002 real estate taxes; third, the amount of \$49,5008.09, in satisfaction of its judgment; and fourth, the amount of \$1,092.92, to the Clerk of Court to hold pending further order of the Court. A copy of the Court's Judgment Entry Confirming Sale and Ordering Distribution of Sale Proceeds is attached hereto as Government Exhibit A for the Court's convenience.

2. Federal law determines the priority of competing liens between a federal tax lien and a lien or other interest created by state law asserted against taxpayer's property or rights to property. *See Aquilino v. United States*, 363 U.S. 509, 513-14 (1960). Where there are competing federal and state liens, the common law principle of first in time, first in right controls. *See In re Terwilliger's Catering Plus, Inc.*, 911 F.2d 1168, 1176 (6th Cir.1990) (citing *United States v. City of New Britain*, 347 U.S. 81, 85 (1954)); *see also S & S Gasket Co. v. United States*, 635 F.2d 568, 570 (6th Cir.1980) (citations omitted).

3. Pursuant to the principle of “first in time, first in right,” subsequent to the mortgage held by BA Mortgage, LLC, for the subject property recorded with the county recorder’s office on September 11, 1979, the Notice of Federal Tax Lien securing the federal income tax assessment recorded on June 25, 1991, has priority over the interests of W.W. Grainger, Midwest Industrial Tool, and the State of Ohio Department of Taxation.

4. As BA Mortgage, LLC has already received its share of the sale proceeds in satisfaction of its judgment, the United States is entitled to the remaining proceeds to be applied toward the unpaid federal tax liabilities of the defendant Bruce Garvin.

WHEREFORE, the United States requests an order of this Court distributing the remaining proceeds of the sale of the real property at 1192 Hickory Lake Drive, Cincinnati, Ohio, in the amount of \$1,092.93, in the form associated with this motion.

Respectfully submitted,

GREGORY G. LOCKHART
United States Attorney

/s/Elizabeth Lan Davis

ELIZABETH LAN DAVIS
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 55
Washington, D.C. 20044
Telephone: (202) 307-6550
Facsimile: (202) 514-5238
E-Mail: Elizabeth.Lan@usdoj.gov

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing *United States' Motion for Order of Distribution* has this 22nd day of June 2007, been electronically filed with the Clerk of the District Court using its CM/ECF system.

s/Elizabeth Lan Davis

ELIZABETH LAN DAVIS

Trial Attorney, Tax Division

U.S. Department of Justice

P.O. Box 55

Washington, D.C. 20044

Telephone: (202) 307-6550

Facsimile: (202) 514-5238

E-Mail: Elizabeth.Lan@usdoj.gov